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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,052	12/04/2001	Adelmo Monsalve-Gonzalez	5553	9205

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/005,052

Applicant(s)

MONSALVE-GONZALEZ ET AL.

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Upon further consideration, the indication of allowability of claims 10-15 and 19 is hereby withdrawn. For this reason, the finality of the office action mailed on 6/10/2004 is hereby withdrawn. The claims are rejected as followed.

Claims 1-9,16-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley

Stanley discloses a method of preparing a bran product. The method comprises the steps of reacting the bran with lower aliphatic carboxylic acid, acid halide, ester or anhydride and bleaching the reacted bran with one or more bleaching agents. The agents used are peroxides, chlorites, peracids and ozone. Following breaching, the bleached bran is isolated from the bleaching medium by filtration, centrifugation etc, washed and dried to form a free-flowing particulate. (see columns 1,3-4 and example 5). The pH is adjusted to an acidic level after the esterifying step and before the bleaching step. Example 5 discloses adjusting the ph to 5 before bleaching. This meets the limitation of acidifying the bran to a pH of about 4-6 prior to treating with ozone.

The teaching of Stanley is described above. Stanley does not disclose the bran is wheat bran or red wheat bran, the size of the bran is about 100 microns, the steps recited in claims 10-15, the acid as in claims 16-17, the moisture content of the bran, the amount of ozone, admixing the bran with flour, forming a dry mix, forming cereal pieces, adding the bran to a grain product and forming the grain product into finished baked good.

While Stanley discloses the preferred bran is corn bran, other material including vegetable, cereal and fruit sources can be used as the starting material. Therefore, it would have been obvious to one skilled in the art to use other type of bran when desiring to bleach such bran product. Stanley discloses bran of varying particle sizes; it would have been an obvious matter of choice to pick any size. It would also have been obvious to determine the amount of ozone to be used through routine experimentation depending on the degree of bleaching desired and the amount of time at which bleaching is carried out. For example, a higher concentration will reduce the bleaching time or vice versa. The bran product disclosed by Stanley is a dietary fiber material having improved color stability. It would have been obvious to one skilled in the art to add the bran product to any food product including dry mix, cereal, grain product, baked goods etc...when one desires to increase the fiber content of that product. Stanley discloses adding the bran to dough for bread, crackers, cookies and biscuits. If the bran can be added to the dough, it can be added to the flour which is used to make the dough. The use of whole wheat flour or regular wheat flour would have been an obvious matter of choice. It would also have been obvious to add the bran to grain product and cereal product because these food products are typical made to have a high fiber content. The addition of the bran will serve such purpose. The making of cereal pieces is well known in the art; thus, the steps of making the cereal pieces would have been readily apparent to one skilled in the art. It would also have been obvious to use grain product to prepare baked good because they are commonly prepared from grain product. The properties claimed are obviously found in the Stanley product

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because the bran is treated with ozone just as claimed. Since the bran is treated so that it is bleached, it is obvious the amount of ozone used has to be sufficient to bleach. Stanley discloses the bleaching results in a lighter colored bran. During the process of bleaching, the properties such as increased vanillin and reduced ferulic acid are obtained because the bran is treated with ozone. Applicant has not shown any unexpected result or criticality with the amount claimed. When the bran is added to whole wheat flour, it is obvious the pH will be the same as claimed because the same flour is used.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 1-3, 6-21, 23, 24, 25, 26, 33, 34, 36-39 rejected under 35 U.S.C. 102(e) as being anticipated by Wo 02/21936A2.

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Wo 02/21936 discloses a bleached bran and methods of preparation. The starting material for the bleaching can be any type of wheat such as white wheat or red wheat. The bran can be any suitable particle size such as 100 microns or more. The process comprises the steps of treating the bran with about .02-.1% chelating agent for about 1-15 minutes at a temperature of about 70-90 degree c, washing and rinsing the bran, filtering the bran, blanching the bran for 3-10 minutes at 75-85 degree C, washing and rinsing the blanched bran and treating the bran with .1-2% ozone at pH 4-5. The moisture content of the bleached bran is 4-12%. The anti-oxidant activity is increased up to 30-35% and the ferulic acid is reduced. The bleached bran can be recombined with flours. The bran can be put into dry mixes, ready-to-eat cereals, refrigerated uncooked or bakeable dough, cooked cereal dough. The chelating agents used are selected from the ones listed on page 7 lines 25-29. (see pages 6-10,12-13,16,18)

The reference discloses the limitations of the above cited claimed. The claimed language does not exclude the additional steps disclosed in the patent. The property of the reduced ferulic acid is inherent; also, page 16 discloses the ferulic acid is present in reduced amount as compared with native bran. Since the treatment with ozone is not done under reduced or increased pressure, it is inherent the process takes place at atmospheric pressure.

Claims 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 02/21936A2.

WO 02/21936A2 does not disclose the forms of the cereal pieces, and the steps as set forth in claim 27.

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Since the bran is added to cereal product, it would have been obvious to one skilled in the art to determine the steps of forming the cereal pieces. The steps are well known for forming cereal product. It would have been obvious to form the cereal in any forms such as flake, puff; this would have been a matter of reference. It would also have been obvious to fry the piece depending on the texture desired.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

October 08, 2004


LIEN TRAN
PRIMARY EXAMINER
